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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,235	02/26/2002	Jaime S. Vargas	109	6671
33109	7590	05/05/2004		
CARDICA, INC. 900 SAGINAW DRIVE REDWOOD CITY, CA 94063				
EXAMINER PANTUCK, BRADFORD C				
ART UNIT		PAPER NUMBER		
3731				
DATE MAILED: 05/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,235

Applicant(s)

VARGAS, JAIME S.

Examiner

Bradford C Pantuck

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6-28-02, 6-18-02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Claims 1-18 in Paper No. 03/09/2004 is acknowledged.
2. Claims 19-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected groups, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 03/09/2004.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,011,487 to Shichman. Regarding Claims 1, 3-5, and 15, Shichman discloses a tool capable of being used to perform an end-to-end anastomosis between two blood vessels having flaps on them. Each of the two clamps (10) is fixed to and slideable on jig/rail (8) [Column 3, lines 55-56]. Each of the two clamps has a first arm (40) and a second arm (42) and is configured to hold tissue flaps—in a couple different senses: 1. when each clamp holds a vessel, the flap is attached to that vessel, therefore the clamp holds the flap, too; 2. the fold can be folded over the top

of the upper member (52) of the clamp (10) to contact member (90). *Nowhere does Applicant show his device holding a tissue flap in the drawings.*

4. Regarding Claim 2, Shichman discloses a tissue preparation device (4), which is capable of pressing tissue.
5. Regarding Claim 6, each clamp has multiple places where it can be grasped to slide it on the jig (8).
6. Regarding Claims 7 and 8, one clamp has an alignment boss (48) and the other clamp has a tubular boss receiver capable of receiving said alignment boss [see Attachment #1].
7. Regarding Claim 9, each clamp has a clip (116) [see Fig. 1] capable of clipping tissue or other material. This clip has teeth and could grasp something, holding it together, as any clip would do [Column 7, lines 30-53].
8. Regarding Claim 16, Shichman discloses a clamping lever (110) [see Fig. 3] movably connected to the clamp (10). Motion of the clamping lever to predetermined position (the snapshot shown in Fig. 3) locks the first arm and second arm in a fixed position. The locking mechanism is the "contact edge" (102), which has different parallel bumps, as shown in Fig. 3.
9. Regarding Claim 17, Shichman discloses a clamp (10) with a passage defined by a space between each arm of the clamp (between surfaces 86 in Figure 3). There is a finger (blood vessel 54) moveable between the clamps through the passage.

10. Claims 1 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,158,567 to Green. Regarding Claim 1, Green discloses a tool capable of performing end-to-side anastomosis—for two vessels each having two flaps. Green's invention has two clamps (13) moveable relative to each other. Each clamp is configured to hold tissue and to hold flaps of a blood vessel [see Fig. 1; Fig. 5].
11. Regarding Claims 10 and 11, Green's device has a connector deployer (22) configured to deploy a staple (21) through a flap of tissue (12) [Column 2, lines 35-42].
12. Regarding Claims 12 and 13, each clamp of Green's device has an actuator (18) configured to actuate the staple, pushing it forward in the chamber as seen in the progression from Fig. 5 to Fig. 6 [see also Column 3, lines 31-37]. The actuator (18) moves through a channel (hollow space in Fig. 8)
13. Regarding Claim 14, Green's device has a connector receiver (inner edges of components 31 in Figure 7) corresponding to the connector deployer (22), meaning *they work together to form the closed staple* [see Fig. 8].
14. Claims 1, 3, 4, 6, 9, and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,635,636 to Goldstein. Regarding Claim 1, Goldstein discloses a tool capable of helping with an end-to-side anastomosis. There are two clamps that are separately openable and therefore moveable relative to each other. Additionally, the clamps are connected by beams (14 and 16) that are hinged at hinge

(18/20) and can rotate relative to each other. Each clamp is configured to hold the end of a blood vessel and could hold the flap of the end of the blood vessel between the distal end of arms (60 and 62) [Fig. 1].

15. Regarding Claim 18, each clamp has a knife (68) for cutting tissue [Column 4, lines 64-67; Fig. 2].

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 1,151,300 to Soresi

U.S. Patent No. 3,048,177 to Takaro

U.S. Patent No. 1,217,637 to Rink

U.S. Patent No. 3,265,069 to Healey et al.

U.S. Patent No. 6,468,285 to Hsu et al.


U.S. Patent No. 4,245,638 to Lebeck et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Milano
Supervisory Patent Examiner
Art Unit 3731

BCP
BCP
April 29, 2004